

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

APOLONIA SCOTT, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF KELSEY SCOTT, DECEASED

PLAINTIFF

VS.

CIVIL ACTION NO. 4:22cv63-DMB-JMV

TENNESSEE STEEL HAULERS, INC.
AND DERRICK HOWARD

DEFENDANTS

JOINT NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI, GREENVILLE DIVISION

Hon. Elmus W. Stockstill
Post Office Box 1953
Greenwood, MS 38935

LEFLORE COUNTY CIRCUIT CLERK

Carlos D. Palmer, Esq.
Tangala L. Hollis-Palmer, Esq.
Palmer Law Services, LLC
Post Office Box 272
Greenwood, MS 38935

ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that Defendants Tennessee Steel Haulers, Inc.¹ (“Tennessee Steel Haulers”) and Derrick Howard (“Howard”) (collectively “Defendants”), without waiving and subject to all of their defenses, hereby remove this case pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 from the Circuit Court of Leflore County, Mississippi to the United States District Court for the Northern District of Mississippi, Greenville Division. As grounds for this removal, Defendants state as follows:

¹ Tennessee Steel Haulers, Inc. has been incorrectly named as a Defendant in this lawsuit. The correct entity is Tennessee Steel Haulers, LLC.

1. This action was commenced on or about March 22, 2022, by the filing of a Complaint in the Circuit Court of Leflore County, Mississippi captioned *Apolonia Scott, as Personal Representative of the Estate of Kelsey Scott, Deceased v. Tennessee Steel Haulers, Inc. and Derrick Howard*, Civil Action No. 2022-0013-CICI (the “State Court Action”). Copies of all process, pleadings and orders served on each Defendant are attached to this Notice of Removal as collective Exhibit A, and are incorporated herein by reference.

2. Defendant Tennessee Steel Haulers, Inc. was putatively served with process on or about March 28, 2022. Plaintiff has not served Defendant Derrick Howard.

3. No Defendant was putatively served with process in this matter greater than 30-days from the date on which this case is being removed. Accordingly, this Notice of Removal is timely filed within 30-days of receipt of the pleading from which Defendants could ascertain that the case is properly removable in accordance with the provisions of 28 U.S.C. § 1446(b). Such removal is therefore timely under 28 U.S.C. § 1446(b). See *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999); see also *Bailey v. Janssen Pharmaceutica, Inc.*, 536 F.3d 1202, 1205 (11th Cir. 2008) (“we ...interpret [28 U.S.C.] § 1446(b) to permit each defendant thirty days in which to seek removal”).

4. This Action is one of a civil nature, wherein the United States District Court for the Northern District of Mississippi, Greenville Division, has jurisdiction pursuant to 28 U.S.C. § 1332.

5. Venue is proper in the District Court for the Northern District of Mississippi because the Circuit Court of Leflore County, Mississippi, where this suit was originally filed, is within said District. 28 U.S.C. §§ 1441(a), 1446(a).

6. The allegations in Plaintiff's Complaint are centered upon an accident, which purportedly occurred in Leflore County, Mississippi. According to the Complaint, Kelsey Scott "was untimely killed and suffered damages" as a result of the aforementioned accident.

7. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of removal, and a copy of this notice of removal is being filed with the Clerk of the Circuit Court of Leflore County, Mississippi.

Diversity Jurisdiction

8. According to Plaintiff's Complaint, Plaintiff Apolonia Scott is a citizen of the State of Mississippi (*Id.* at ¶ 1.).

9. Defendant Tennessee Steel Haulers is a limited liability company existing and formed in the State of Tennessee, and the sole member of Tennessee Steel Haulers, LLC is Daseke TSH LLC, which is a Delaware limited liability company with its principal place of business in Addison, Texas. The sole member of Daseke TSH LLC is Daseke Companies, Inc., a Delaware corporation, with its principal place of business in Addison, Texas. See Complaint, ¶ 4. For the purposes of determining the residency of an LLC such as Tennessee Steel Haulers for diversity purposes, this Court must look to the citizenship of the LLC's individual members. See *Lawson v. Chrysler LLC*, 2009 WL 961226 at *2 (S.D. Miss. Apr. 7, 2009) (citing *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d

1077, 1080 (5th Cir.2008)). Defendant Tennessee Steel Haulers is therefore a citizen of Delaware and Texas.

11. Defendant Howard is an adult resident citizen of the state of Louisiana. See Complaint, ¶ 5.

12. Thus, the controversy in said suit is now and at the time of the commencement was, and at all times has been, a controversy between citizens of different states. There is, therefore, complete diversity of citizenship between Plaintiff and Defendants.

13. Plaintiff clearly seeks damages in excess of \$75,000.00, exclusive of interest and costs. See Compl., ¶ 1. (“This is an action for damages in excess of One-Hundred Thousand dollars (\$100,000.00), exclusive of interest and costs”). Therefore, the amount in controversy requirement for federal diversity of citizenship jurisdiction is satisfied. 28 U.S.C. §§ 1332(a) and 1446(c)(2) (“ . . . the sum demanded in good faith in the initial pleading *shall be deemed to be the amount in controversy*[.]”)

14. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any of Defendants’ rights to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim upon which relief can be granted; (7) failure to join an indispensable party(ies); (8) statute of limitations as a bar; (9) untimely service; or (10) any other pertinent defense available under Mississippi or Federal Rules of Civil Procedure 12, any state or federal statute, or otherwise.

WHEREFORE, Defendants respectfully remove this action from the Circuit Court of Leflore County, Mississippi, to the United States District Court for the Northern District of Mississippi, Greenville Division pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

Respectfully submitted, this the 26th day of April, 2022.

TENNESSEE STEEL HAULERS, INC. AND
DERRICK HOWARD

By: s/ Margaret Z. Smith
MARGARET Z. SMITH (MB# 104178)

ONE OF THEIR ATTORNEYS

OF COUNSEL:

Arthur D. Spratlin, Jr. (MB# 9035)
Margaret Z. Smith (MB# 104178)
Nicole A. Broussard (MB# 106273)
BUTLER SNOW LLP
1020 Highland Colony Parkway, Suite 1400
Ridgeland, MS 39157
Post Office Box 6010
Ridgeland, MS 39158
Tel: 601-985-4568 (ADS)
Tel: 601-985-4405 (MZS)
Tel: 601.985.4510 (NAB)
Fax: 601-985-4500
art.spratlin@butlersnow.com
margaret.smith@butlersnow.com
nicole.broussard@butlersnow.com

CERTIFICATE OF SERVICE

I, Margaret Z. Smith, one of the attorneys for Defendants, electronically filed the foregoing Notice of Removal with the Clerk of the Court using the Court's ECF system, which sent notification of such filing to the following counsel of record:

Carlos D. Palmer, Esq.
Tangala L. Hollis-Palmer, Esq.
Palmer Law Services, LLC
Post Office Box 272
Greenwood, MS 38935

ATTORNEYS FOR PLAINTIFF

This the 26th day of April, 2022.

s/ Margaret Z. Smith
MARGARET Z. SMITH